(1)

FILED

OCT 07 2001

No.

In The

Supreme Court of the United States

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MINDEN BANK & TRUST COMPANY

Petitioner

VERSUS

DEMPSEY L. TRAINER A/K/A D. L. TRAINER AND ROBERT A. BOOTH

Respondent

****

On Petition for Writ of Certiorari
To The
Supreme Court of the State of Louisiana

****

PETITION FOR WRIT OF CERTIORARI

****

ROBERT A. BOOTH
IN PROPER PERSON
400 TRAVIS STREET, SUITE 320
SHREVEPORT, LA 71101
(318) 226-0754

36 pp

QUESTIONS PRESENTED

1. Is a natural person who hypothecated his car to secure a bank indebtedness of another person by executing a Consumer Security Agreement a cosigner if he did not sign the promissory note for which security was given?

2. Can a cosigner have a personal cause of action against a bank that fails to give that person a written disclosure statement as required by law?

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I. On September 21, 2001 the Louisiana Supreme Court denied writs of certiorari from the Second Circuit Court of Appeal, State of Louisiana, rendered May 9, 2001 affirming the decision of the First Judicial District Court of Caddo Parish, Louisiana of July 12, 2000 on a Motion for Summary Judgment. These decisions are in conflict with Federal Statutes and Federal Courts of Appeal decisions

A. The original trial judgment held that there is no personal cause of action for violations of USCA 15 § 1601, et seq.; nor 12 CFR § 227.11, § 227.12, § 227.13 and § 227.14

B. The court ruled that petitioner was not a cosigner because he did not sign the promissory note

C. The court in a dictum ruling held the loan itself was not a business loan and could not be a protected consumer loan under the statutes cited. This was based on the impressions of a bank officer in a Motion for a New Trial unrelated to the Motion for a Summary Judgment

II. These decisions are misinterpretations of Federal Statutes and Rules and are in conflict with Federal Courts of Appeal decisions

III. - The granting of a writ is important in the instant case as the people of Louisiana, if this case is followed, will have no personal cause of action under the Truth in Lending law

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Petitioner respectfully petitions for a writ of certiorari to review the decisions of the Louisiana Supreme Court and the Louisiana Second Circuit Court of Appeals.

OPINIONS

None of the opinions below are reported.

STATEMENT OF JURISDICTION

The judgment of the Louisiana Supreme Court, the Court of Last Resort, was entered September 21, 2001. The judgment of the Louisiana Second Circuit Court of Appeal was entered May 9, 2001.

The judgments of these courts are misinterpretations of Federal Statutes and Rules and Judgments of Federal Courts of Appeal.

STATUTORY AND RULE PROVISIONS INVOLVED

This case involves 15 U.S.C.A. § 1601, et seq. (part of the Truth in Lending Law) and 12 C.F.R. 227.12 and 227.14, which implement 1601, et seq. by authorization of the Federal Trade Commission.

15 U.S.C.A. § 1601 sets out congressional intent for enacting the Truth in Lending Law, which is, in part, the informed use of credit. (This and some

other statues and rules will be quoted verbatim in the appendix due to their length.)

15 U.S.C.A. § 1602(a) and (b) are definitions and rules of construction.

a. The definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

b. The term "Board" refers to the Board of Governors of the Federal Reserve System.

15 U.S.C.A. § 1604(a)(b) are promulgations, contents, etc. of regulations and authorized model disclosure forms by the Board.

15 U.S.C.A. § 1640(a) allows debtors to sue creditors for violations under this part (1) for actual damages and part (3) reasonable attorney fees.

12 C.F.R. 227.12 sets out definitions (2) cosigner includes and person whose signature is required as a condition of granting credit to a consumer, (3) a person who meets the definition in this paragraph is a cosigner, whether or not the person is designated as such on the credit obligation.

12 C.F.R. 227.14--Unfair or deceptive practices involving cosigners with a model "Notice to Cosigner" quoted verbatim in appendix.

STATEMENT OF THE CASE

On March 2, 1999, petitioner signed a consumer security agreement in favor of Minden Bank & Trust Co. In the agreement, he hypothecated and pledged his 1997 Ford Escort to satisfy the past, present and future debts of D. L. Trainer.

Trainer defaulted on the note secured by the consumer security agreement and Minden Bank & Trust Co. filed suit against petitioner and D. L. Trainer in the First Judicial District Court, Caddo Parish, Louisiana and seized petitioner's car.

Petitioner filed an Answer and Reconventional Demand citing the failure to give petitioner a notice of disclosure as required by 12 C.F.R. 227.12 and 12 C.F.R. 227.14 as he was in fact a cosigner under the 227.12 definitions, and that failure to disclose led to a right to sue for actual damages and attorney fees under U.S.C.A. § 1640 (a)(1)(3).

The respondent filed a Motion for Summary Judgment stating that there is no personal cause of action under 15 U.S.C.A. § 1601, et seq. and 12 C.F.R.

227.12 and 227.14 and that petitioner was not a cosigner. Another allegation was that the loan was a business loan though there has been testimony pro and con in a previous motion for a new trial.

The trial court granted the respondent a motion, basing its judgment on the allegation of their motion as correct interpretation of the law.

Petitioner appealed to the Louisiana Second Circuit Court of Appeal again citing 15 U.S.C.A. § 1601, et seq., 12 C.F.R. 227.12 and 227.14, and the case of *Ratner v. Chemical Bank New York Trust Co.*, 309 Fed. Supplement 984, which held: "Truth in Lending provides separate jurisdiction for separate remedies of Federal Reserve Board acting on its own initiative to seek redress or injunctive relief for violation of the Act by member banks and civil remedy for private persons. Truth in Lending Act §§ 108, 130, 130e, 15 U.S.C.A. §§ 1607, 1640, 1640(e); Federal Deposit Insurance Act § 2 [8], 12 U.S.C.A. § 1818."

Also, *Renee Purtle v. Eldridge Auto Sales, Inc.*, U.S. Court of Appeals, Sixth Circuit, 91 F.3d 797, 1996.

"Purpose of allowing statutory damage under Truth in Lending Act (TILA) is to encourage lawsuits by individual consumers as a means of enforcing creditor compliance with the TILA.

Applicant's remedy for the violation of the mandatory requirements of this regulation is set out in 15 U.S.C.A. § 1640, as follows:" [Herein follows a full citation of § 1640 which is found elsewhere in this document].

The appellate court upheld the trial court's decision on May 7, 2001 in much the same language as the trial court, i.e., there is no personal cause of action under 15 U.S.C.A. § 1601, et seq. nor 12 C.F.R. § 227.12 and 227.14; that appellant was not a cosigner and the loan was a business loan anyway.

Petitioner appealed to the Louisiana Supreme Court for writs, which were denied without written opinion on September 21, 2001.

REASONS FOR GRANTING THE WRIT

I. THE DECISION OF THE TRIAL COURT, SUBSEQUENTLY UPHELD BY THE COURT OF APPEALS, AND WRITS DENIED BY THE SUPREME COURT IS A MINITERPRETATION OF FEDERAL STATUTES.

A. ***Petitioner is clearly a cosigner under the definitions set out in 12 C.F.R. 227.12, and as such, must be given the disclosure statement set out in 12***

C.F.R. 227.14, or a disclosure of similar language. He was not given such notice, which was never contested by respondent.

B. *Having been provided no disclosure statement, petitioner has a personal cause of action against respondent as provided in 15 U.S.C.A. § 1640 (a)(1)(2).*

C. *The holding of these courts is in contravention of the U.S. Court of Appeals, namely Ratner v. Chemical Bank New York Trust Co. and Renee Purtle v. Elridge Auto Sales, Inc.*

CONCLUSION

For the foregoing reasons, the writ of certiorari should be granted.

Respectfully Submitted,

ROBERT A. BOOTH
IN PROPER PERSON
400 TRAVIS STREET, SUITE 320
SHREVEPORT, LA 71101
(318) 226-0754

APPENDIX

APPENDIX A--Judgment and Opinion of First Judicial District Court, Caddo Parish, Louisiana

FILED
Jul 12 2000
s/Joe Pierre
Joe Pierre
Deputy Clerk of Court

MINDEN BANK & TRUST CO.	: NUMBER 440,641-B
VERSUS	: FIRST JUDICIAL DISTRICT COURT
DEMPSEY L. TRAINER a/k/a D. L. TRAINER and ROBERT A. BOOTH	: CADDO PARISH,

RULING ON MOTION FOR
SUMMARY JUDGMENT FILED
BY MINDEN BANK & TRUST CO.

The Motion for Summary Judgment filed by Minden Bank & Trust (MBT) was argued and submitted for decision on May 30, 2000. Based on the arguments and record, the court concludes the following: (1) that Trainer was indebted to MBT in the amount of $6,025.00 by way of promissory note; (2) that Booth granted a security interest in his 1997

Ford Escort to secure Trainer's indebtedness; (3) that MBT assigned the note to Gary Petty; (4) that upon assignment of the note to Perry, MBT released the vehicle from its seizure effected in this suit and delivered loan documents to Petty; (5) that following assignment, MBT did not participate in, direct or exercise any control over the actions of Petty with respect to the note and security which had been assigned to Petty, and had no knowledge of the disposition of Booth's vehicle.

The undisputed evidence establishes that MBT commenced this suit on May 18, 1999 seeking a money judgment against Dempsey L. Trainer and recognition of its security interest in a motor vehicle belonging to Robert A. Booth. Booth filed a Reconventional Demand alleging violations of the federal consumer credit laws. On or about August 4, 1999, Gary Petty took assignment of the Trainer note. Booth then amended his demand to allege that MBT transferred title to his vehicle and cancelled the lien. He seeks recovery of the $6,500.00 which he paid to Petty to recover his vehicle.

Booth alleges that MBT has violated 12 CFR Part 227 or Regulation AA. Regulation AA does not provide for a private right of action. It is merely a series of definitions and explanations of consumer complaint procedure for violations of the "Truth in Lending Act." It provides that a co-signer of a note

be provided certain notice language when signing the note. Booth did not co-sign the note of Trainer, he merely provided his vehicle as collateral. At no time was he ever personally liable for the Trainer note or amounts in excess to satisfy late fees and collection costs, therefore, he does not fit the definition of "consumer" under Regulation AA.

Booth also alleges violation of Regulation Z, 12 CFR Part 226. Regulation Z provides protection for consumers not personally liable for a debt but who pledge their "principal dwelling" as collateral to secure a debt. Booth's vehicle is not his principal dwelling as contemplated by Regulation Z, therefore, this argument fails as well. Both Regulation Z and Regulation AA work to protect "consumer" debt. Loans made primarily for business purposes are exempted from these Regulations. The loans made to Trainer were business loans to provide working capital for a bar.

Accordingly, the Motion for Summary Judgment filed by Minden Bank and Trust shall be **granted**.

Counsel shall submit a Judgment consistent with the views expressed in this Ruling forthwith.

Signed this 12th day of July, 2000 in Shreveport, Louisiana.

s/Scott J. Crichton
SCOTT J. CRICHTON
DISTRICT JUDGE

Distribution:

Robert Booth - 227-9762
Lake Hearne - 868-2323

APPENDIX B--Judgment and Opinion of Louisiana Second Circuit Court of Appeals

Judgment rendered May 9, 2001
Application for rehearing may be filed within the delay allowed by Art. 2166, LSA-CCP.

No. 34,707 - CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

*****

MINDEN BANK & TRUST COMPANY
Plaintiff-Appellee

versus

DEMPSEY L. TRAINER Defendants-Appellants
A/K/A D. L. TRAINER
AND ROBERT A. BOOTH, JR.

*****

Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 440,641

Honorable Scott J. Crichton, Judge

*****

ROBERT A. BOOTH, JR. IN PROPER PERSON

ROGERS & HEARNE Counsel for Appellee
By: W. Lake Hearne

JOHN W. MONTGOMERY

*****

Before NORRIS, STEWART and DREW, JJ.

NOT DESIGNATED FOR PUBLICATION
Rule 2-16.3, Uniform Rules, Courts of Appeal

STEWART, J.

Appellant, Robert A. Booth, Jr., seeks reversal of a summary judgment dismissing his claims against Minden Bank & Trust Company, ("MBT"). The claims asserted by Booth are based on alleged violations of federal consumer credit and banking laws. We affirm the trial court's judgment in favor of MBT.

FACTS

MBT filed suit against Dempsey L. Trainer, a/k/a D. L. Trainer, on May 18, 1999 to collect on certain promissory notes executed by Trainer and to

collect the balance of an overdrawn checking account. Included among the security held by MBT was a "Consumer Security Agreement" signed by Robert A. Booth, Jr. and dated March 2, 1999, as well as a Uniform Commercial Code financing statement (UCC-1) also signed by Booth. Pursuant to these devices, Booth pledged a 1997 Ford Escort as security for Trainer's obligations. The Escort was subsequently seized by execution of a writ of sequestration.

On June 21, 1999, Booth, as plaintiff-in-reconvention, filed suit against MBT. The Reconventional demand alleged violations of the Truth in Lending Act ("TILA"), 15 U.S.C.A. §§ 1601, et seq., and 12 C.F.R. §§ 227.12 and 227.14 of Regulation AA, which Booth incorrectly referred to as Regulation Z[1]. Booth alleged that he and Trainer met with Ed Carter of MBT on March 2, 199, at which time Booth believed that he was there to have a bill of sale for the Escort notarized. Booth claimed that Trainer was to give him the Escort upon payment of

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[1] Throughout the filings, Booth incorrectly refers to 12 C.F.R. §§227.12 and 227.14 as Regulation Z. Regulation Z is comprised of 12 C.F.R. § 226, et seq., the TILA regulations. The provisions relied on by Booth, 12 C.F.R. §§227.12 and 227.14, are included in Regulation AA. Neither of these provisions are part of the TILA. Instead, Regulation AA governs unfair or deceptive acts or practices by banks.

the final installment note. Booth, who is an attorney, claimed that he signed a series of documents which he believed to be related to the transfer of the Escort from Trainer to him, but which were actually documents granting MBT a security interest in the Escort for the obligations of Trainer. Booth alleged that he did not know that he was granting a security interest in his vehicle and that MBT did not notify him of this fact. Booth's petition ended with a prayer for actual damages representing the value of his seized vehicle, double the amount of any finance charge, and reasonable attorney fees. On July 19, 1999, Booth obtained a default judgment against MBT.

Thereafter, MBT filed a motion for a new trial, which was granted after a hearing. Booth then amended his Reconventional demand to allege actual damages of $6,500, the amount he paid to obtain release of the Escort from Gary Petty. Petty became assignee of Trainer's notes sometime after MBT commenced these proceedings. Petty then contacted Booth regarding the vehicle and released the lien to Booth upon payment of $6,500. In response to Booth's amended demand, MBT filed peremptory exceptions of no cause of action and nonjoinder of a party, Gary Petty. These exceptions were denied.

Next, MBT filed a motion for summary judgment seeking dismissal of Booth's reconventional demand. MBT asserted that the record and a supporting affidavit by Don Sayers,

MBT's vice president, showed that there was no genuine issue of material fact and that MBT was entitled to judgment as a matter of law. MBT referred to the uncontested facts as showing that Trainer was indebted to MBT, that Booth granted a security interest in the Escort to secure Trainer's indebtedness, and that MBT assigned Trainer's note then released the vehicle from seizure and delivered the loan documents to Petty. MBT asserted that its actions were not improper and not in violation of either Regulation AA or Regulation Z (TILA regulations). Booth filed no opposition to MBT's motion for summary judgment because he believed the motion was improper in light of the denial of MBT's exception of no cause of action which raised the same issues. In a judgment rendered July 12, 2000, the trial court granted MBT's motion and dismissed Booth's claims. Booth now appeals this judgment.

DISCUSSION

The first issue raised by Booth is that summary judgment should not have been granted since MBT's motion raised the same factual and legal issues that were raised and rejected in MBT's exception of no cause of action. Booth also asserts that there was no factual or legal change in the status of the case form the time of the denial of the exception until the filing of the motion. We find no merit in this argument.

The exception of no cause of action is used to determine the sufficiency in law of the petition and is triable on the face of the petition, whereby the court must presume that all well-pleaded facts are true. *Mayer v. Valentine Sugars, Inc.*, 444 So.2d 618 (La. 1984); *Holloway v. Midland Risk Ins. Co.*, 33,026 (La. App. 2d Cir. 5/15/00), 759 So.2d 309. In contrast, the summary judgment procedure allows a party to pierce the allegations of fact in the pleadings in order to discern the substance of the allegations and to ensure that only genuine issues are brought to trial. *Mayer v. Valentine Sugars, Inc., supra; Arledge v. Hendricks*, 30,588 (La. App. 2d Cir. 6/26/98), 715 So. 2d 135, *review denied*, 98-2015 (La. 11/20/98), 728 So.2d 1287. Accordingly, the denial of MBT's exception of no cause of action did not preclude that party from raising the same substantive issues by way of a motion for summary judgment. The fact that Booth's Reconventional demand may have stated a cause of action does not mean that his claim is one which sets forth genuine issues for trial and does not preclude his claim from scrutiny under the summary judgment procedure.

The second issue raised by Booth is that the trial court misinterpreted the federal laws and factual issues before it in granting MBT's motion for summary judgment. The gist of Booth's claim is that MBT did not provide him with the notice due a cosigner as required under 12 C.F.R. Part 227.14 of Regulation AA. Booth asserts that MBT's failure to

provide this notice subjects it to liability for "actual damages" as provided in 15 U.S.C. § 1640 of the TILA. This assertion mixes apples with oranges.

Regulation AA governs unfair or deceptive acts or practices by banks in connection with the extension of credit to consumers. See 12 C.F.R. §§227.1 and 227.11. Banks are prohibited from misrepresenting the nature and extent of cosigner liability to any person and from obligation a cosigner prior to informing the cosigner of the nature of the liability. 12 C.F.R. §227.14(a). The cosigner must be given a "clear and conspicuous disclosure statement" prior to becoming obligated. 12 C.F.R. § 227.14 (b)(1).[2] *Id.* Booth contends that he is cosigner and

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[2] The recommended disclosure statement is set forth in 12 C.F.R. §227.14(b)(1) and provides, in part:

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The bank can collect this debt from you without first trying to collect from the borrower. The bank can use the same collection methods against you that can be used against the borrower, such as

that he was entitled to this notice. Even if Booth's contention is correct, no private right of action for damages is available under Regulation AA.[3] Instead, Regulation AA provides a consumer complaint procedure for enforcement of its provisions. This procedure is set forth in 12 C.F.R. §227.2. Because no private right of action is afforded under Regulation AA, MBT's motion for summary judgment was properly granted.[4]

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suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

[3]We reject Booth's contention that he was a cosigner. Booth did not sign Trainer's promissory notes. He merely signed documents which granted a security interest in his vehicle to secure Trainer's obligations. He did not obligate himself to pay Trainer's debt in the event of default by Trainer.

[4]Booth refers in his brief to 15 U.S.C.A. §57(e) as providing for a private right of action. However, that provision pertains to judicial review of rules pertaining to unfair or deceptive acts or practices that are prescribed by the authority of the Federal Trade Commission. It clearly does not provide a private right of action for complaints of unfair or deceptive acts or practices by banks.

Moreover, Booth's reliance on 15 U.S.C. §1640(a) as providing a private right of action for violations of Regulation AA is misplaced. This statute provides for the civil liability of creditors who fail to comply with the requirements of the TILA/Regulation Z; it does not provide for the civil liability of banks which violate Regulation AA. The purpose of the TILA is to ensure the meaningful disclosure of credit terms to consumers. 15 U.S.C. §1601 (a); *Smith v. Chapman*, 614 F.2d 968 (C.A. 5th 1980). As stated previously, Booth has not alleged any specific violation of the TILA or Regulation Z, but has merely sought to utilize the civil liability provision for truth in lending violations as a means for enforcing his claims under Regulation AA, specifically 12 C.F.R. §§227.12 and 227.14. Close review of this record indicates that throughout the proceedings in the lower court and on appeal, Booth has mistakenly referred to the provisions of Regulation AA as the TILA or Regulation Z.

Additionally, the record before the trial court on summary judgment shows that Booth would not have a viable claim under the TILA. Credit transactions involving extensions of credit primarily for business, commercial or agricultural purposes are exempt from TILA coverage. 15 U.S.C. §1603(1): 12 C.F.R. §226.3(a)(1). The testimony from the hearing on the motion for a new trial, which was considered by the trial court in granting summary judgment, establishes that credit was extended to Trainer to

relieve cash flow problems associated with his business. Because the extension of credit to Trainer was for business or commercial purposes, the requirements of TILA do not apply, and no action is available to Booth for alleged violations of the TILA. Additionally, the TILA requires disclosure by creditors to the person who is obligated on a consumer credit transaction, and where there is more than one obligor, the creditor is only required to provide disclosure to the primary obligor. 15 U.S.C. §1631 (a). Here, Booth was not an obligor. He merely granted a security interest in his vehicle. Also, since Trainer was the primary obligor, any notice of credit terms to him would satisfy the TILA's requirements.

From our *de novo* review of the record and for the reasons mentioned, we find that there is no genuine issue of material fact and that MBT is entitled to judgment in its favor as a matter of law. The trial court did not err in granting MBT's motion for summary judgment and dismissing Booth's Reconventional demand.

CONCLUSION

The judgment of the trial court is affirmed at Booth's cost.

AFFIRMED.

APPENDIX C--Denial of Writ of Certiorari of Louisiana Supreme Court Without Opinion

The Supreme Court of the State of Louisiana

MINDEN BANK & TRUST COMPANY

VS. **NO. 2001-C-1653**

DEMPSEY L. TRAINER A/K/A D. L. TRAINER AND ROBERT A. BOOTH, JR.

IN RE: Booth, Robert A. Jr.; - Defendant; Applying for Supervisory and/or Remedial Writs, Parish of Caddo, 1st Judicial District Court Div. B., Nos. 440,641; to the Court of Appeal, Second Circuit, No. 34,707-CA

September 21, 2001
Denied.

JTK
PFC
CDK
BJJ
CDT
RLL

Supreme Court of
Louisiana September 21, 2001
s/Katherine A. Fontana
Clerk of Court For the Court

APPENDIX D-- U.S.C.A. 15 § 1601

Congressional findings and declaration of purpose

(a) Informed use of credit

The congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.

APPENDIX E– U.S.C.A. 15 § 1602

Definitions and rules of construction

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) The term "Board" refers to the Board of Governors of the Federal Reserve System.

APPENDIX F– U.S.C.A. 15 § 1604

(a) Promulgation, contents, etc. of regulations

The Board shall prescribe regulations to carry out the purposes of this subchapter. Except in the case of a mortgage referred to in section 1602(aa) of this title, these regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(b) Model disclosure forms and clauses; publication, criteria, compliance, etc.

The Board shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this subchapter and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures. In devising such forms, the Board shall consider the use by creditors or lessors of data processing or similar automated equipment. Nothing in this subchapter may be construed to require a creditor or lessor to use any such model form or clause prescribed by the Board under this section. A creditor or lessor shall be deemed to be in compliance with the disclosure provisions of this subchapter with respect to other than numerical disclosures if the creditor or lessor (1) uses any appropriate model form or clause as published by the Board, or (2) uses any such model form or clause and changes it by (A) deleting any information which is not required by this subchapter, or (B) rearranging the format, if in making such deletion or rearranging the format, the creditor or lessor does not affect the substance, clarity or meaningful sequence of the disclosure.

APPENDIX G– U.S.C.A. 15 § 1640

§ 1640. Civil Liability

(a) Individual or class action for damages; amount of award; factors determining amount of award

Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this part, including any requirement under section 1635 of this title, or part D or E of this subchapter with respect to any person is liable to such person in an amount equal to the sum of –

(1) any actual damage sustained by such person as a result of the failure: . . .

(3) in the case of any successful action to enforce the foregoing liability or in any action in which a person is determined to have a right of rescission under section 1635 of this title, the costs of the action, together with reasonable attorney's fees as determined by the court; and . . .

APPENDIX H– 12 CFR § 227.12

Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Consumer* means a natural person who seeks to acquire goods, services, or money for personal, family or household use other than for the purchase of real property.

(b)(1) *Cosigner* means a natural person who assumes liability for the obligation of a consumer without receiving goods, services or money in return for the obligation, or, in the case of an open-end credit obligation, without receiving th4e contractual right to obtain extensions of credit under the account.

(2) *Cosigner* includes any person whose signature is requested as a condition to granting credit to a consumer, or as a condition for forbearance on collection of a consumer's obligation that is in default. The term does not include a spouse whose signature is required on a credit obligation to perfect a security interest pursuant to state law.

(3) A person who meets the definition in this paragraph is a *cosigner*, whether or not the person is designated as such on the credit obligation.

APPENDIX I– 12 CFR § 227.14

Unfair or deceptive practices involving cosigners.

(a) *Prohibited practices.* In connection with the extension of credit to consumers, it is:

(1) A deceptive act or practice for a bank to misrepresent the nature or extent of cosigner liability to any person; and

(2) An unfair act or practice for a bank to obligate a cosigner unless the cosigner is informed prior to becoming obligated of the nature of the cosigner's liability.

(b) *Disclosure requirement.*

(1) A clear and conspicuous disclosure statement shall be given in writing to the cosigner prior to becoming obligated. The

disclosure statement shall be substantially similar to the following statement and shall either be a separate document or included in the documents evidencing the consumer credit obligation.

Notice to Cosigner

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The bank can collect this debt from you without first trying to collect from the borrower. The bank can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.